

FILED

JUN - 1 2016

Clerk, U.S. District Court
District Of Montana
Billings

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

WILLIE ANTOINE REDD,

Defendant/Movant.

Cause No. CR 13-45-BLG-SPW
CV 16-65-BLG-SPW

ORDER DENYING § 2255 MOTION
AND DENYING CERTIFICATE OF
APPEALABILITY

On May 31, 2016, Defendant Redd filed a motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255. Redd is a federal prisoner proceeding pro se.

Redd was convicted of being a felon in possession of a firearm, a violation of 18 U.S.C. § 922(g). At sentencing, his base offense level was determined, in part, by the fact that he had previously been convicted of a crime of violence. *See* U.S.S.G. § 2K2.1(a)(4)(A); Presentence Report ¶ 24. He was sentenced to serve 78 months in prison, to be followed by a three-year term of supervised release. Judgment (Doc. 74) at 2-3.

Based on *Johnson v. United States*, __ U.S. __, 135 S. Ct. 2551 (2015), Redd contends that his sentence should not have been predicated on any prior conviction for a “crime of violence.” *See* Mot. § 2255 (Doc. 94) at 1. But Redd

was convicted in Colorado in 2008 of felony menacing, a violation of Colo. Rev. Stat. § 18-3-206. *See* Presentence Report ¶ 60. Ninth Circuit law holds that a felony conviction for menacing under Colorado law is categorically a crime of violence because it “has as an element the use, attempted use, or threatened use of physical force against the person of another.” *See* U.S.S.G. § 4B1.2(a)(1); *see also* U.S.S.G. § 2K2.1 Application Note 1; *United States v. Melchor-Meceno*, 620 F.3d 1180, 1186 (9th Cir. 2010).

Assuming, as Redd argues, that *Johnson* invalidates sentences imposed in reliance on the residual clause of U.S.S.G. § 4B1.2(a)(2), Redd’s sentence relied on U.S.S.G. § 4B1.2(a)(1). Therefore, *Johnson* does not alter the characterization of Redd’s felony conviction for menacing as a “crime of violence.”

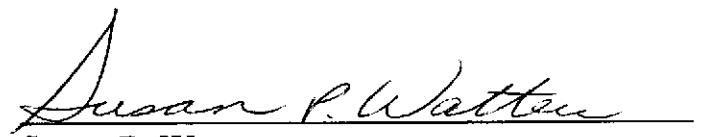
A certificate of appealability is denied on all issues. Redd’s case is controlled by *Melchor-Meceno*, 620 F.3d at 1186.

Accordingly, IT IS HEREBY ORDERED as follows:

1. Redd’s motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255 (Doc. 94) is DENIED for lack of merit.
2. A certificate of appealability is DENIED on all issues. The clerk shall immediately process the appeal if Redd files a notice of appeal.
3. The clerk shall ensure that all pending motions in this case and in CV 16-65-BLG-SPW are terminated and shall close the civil file by entering judgment in

favor of the United States and against Redd.

DATED this 1st day of June, 2016.



Susan P. Watters
United States District Court